(D) Jurisdictional Statement.

DATE OF JUDGMENT SOUGHT TO BE REVIEWED.

Judgment of the Trial Court was affirmed by the Supreme Court of Nebraska on January 10, 1941 (R. 31-39). The Motion for Rehearing was filed January 25, 1941 (R. 39).

The Motion for Rehearing was overruled on the 1st day of March, 1941 (R. 67).

STATUTORY PROVISIONS BELIEVED TO SUSTAIN JURISDICTION.

This Court has jurisdiction to review the judgment in question under Section 237(a) of the Act of February 13, 1925, Chapter 229, 43 Stats. 936; Title 28, Section 344(a) U. S. C. A., wherein it is provided that a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had may be reviewed where is drawn in question the validity of any statute of any State on the ground of its being repugnant to the Constitution of the United States and the decision is in favor of its validity.

This Court also has jurisdiction to review the judgment in question under Section 237(b) of the Act of February 13, 1925, Chapter 229, 43 Stats. 936; Section 344(b), Title 28, U. S. C. A., wherein it is provided that it shall be competent for the Supreme Court by certiorari to require that there be certified to it for review and determination any cause where any final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution of the United States, or where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution of the United States.

STATUTES OF THE STATE, VALIDITY OF WHICH IS INVOLVED.

These statutes have been referred to in the Summary Statement at the head of this Petition.

(E) Time, Method and Manner of Raising the Federal Questions Here Involved.

The Federal questions here sought to be reviewed were raised after the Supreme Court of Nebraska in its opinion had so construed the statutes here involved as to bring them in conflict with the due process and contract clauses of the Constitution of the United States (R. 39).

The method of raising them was by motion for an order vacating and setting aside the decision, opinion and judgment and granting a rehearing for the reason that the construction placed by the Court upon the statutes here involved was in contravention of the Fifth and Fourteenth Amendments and Section 10, Article 1, of the Constitution of the United States. (Paragraphs VI and VII of the Motion for Rehearing; R. 40-41.)

(F) Reasons Relied On for the Allowance of the Writ.

1. The Supreme Court of Nebraska has decided a Federal question of substance not heretofore determined by this Court, namely, the two questions hereinbefore set out under the heading of "Questions Presented", ignoring conflicting decisions of other states.

2. There is here involved the right of a public treasurer to claim the protection of the due process clause of the Federal Constitution in order to avoid having his property confiscated by the construction placed on certain sections of the Depository Law by the Nebraska Supreme Court.

3. There is here involved the right of a public treasurer to claim the protection of the contract clause of the Federal

Constitution where his bond is conditioned upon the performance by him of the acts required of him by law and he fails in that respect only in the sense that he obeys an order of the Governing Body, disobedience of which would, in and of itself, have been a violation of the law.

4. When a Depository Law is so construed that no matter which way a public treasurer turns in a given situation his decision will be wrong, it is inconceivable that the Federal Constitution will not protect him against the confiscation of his property on the theory that he is an insurer. Public treasurers and Governing Bodies everywhere are interested in this question, and the law with reference to the liability of public treasurers needs to be clarified by an expression from this Court as to how much protection the due process and contract clauses of the Federal Constitution give a Treasurer in this situation.

(G) Statement of the Grounds Upon Which It Is Contended the Questions Involved Are Substantial.

The reasons assigned above partly answer this question. At common law public treasurers were insurers. Legislators have recognized that Treasurers should not be asked to accept that strict responsibility under present day conditions and Depository Laws relieving public treasurers of this strict liability have everywhere been enacted. Now the question arises as to what a County Treasurer can do to protect himself when the statute says that he must put the County funds in a bank designated by the County Board, that he must require the bank to give a Depository bond, but the bank can't furnish a bond, and the County Board nevertheless orders the Treasurer to accept such security as the bank can furnish and to put the money in the bank regardless. Where is the responsibility in such a situation? Is the Treasurer to be held as an insurer or should the

responsibility be placed upon the County Board? Has the Treasurer any protection in the Federal Constitution when the County attempts to hold him as an insurer and the State Supreme Court says it can be done? This is an important proposition in the law of public officers which, up to date, has not yet been decided by this Court and which it is believed merits the consideration of this Court, especially in view of the ignoring of the question by the Nebraska Supreme Court.

WHEREFORE, Your Petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the Supreme Court of Nebraska, commanding that Court to certify and send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record of all proceedings in the case of *The County of Garfield, Nebraska, Plaintiff-Appellee* vs. *Jesse L. Pearl and The Massachusetts Bonding and Insurance Company,* Defendants-Appellants, General Number 30865, and that the said judgment of said Court may be reviewed by this Honorable Court and that Your Petitioners may have such other and further relief in the premises as to this Honorable Court may seem mete and just; and Your Petitioners will ever pray.

Respectfully submitted,

JESSE L. PEARL AND MASSACHUSETTS
BONDING AND INSURANCE COMPANY,

By J. A. C. KENNEDY,
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